



October 16, 2020

Barbara Neal
Executive Director
Vermont Enhanced 9-1-1 Board ("Board")
100 State St., 4th Floor
Montpelier, VT 05620-6501

Dear Executive Director Neal and the Board:

CTIA¹ appreciates the continued work by the Board to meet the Legislature's mandate to collect information on 9-1-1 outages while working with stakeholders to improve the Board's Proposed Rules on outage reporting.²

CTIA and its members recognize the importance wireless consumers place on their devices and networks in emergency situations, including their reliance on their wireless device to reach emergency services. This is why the wireless industry is strongly committed to minimizing network downtime and focuses on restoring service quickly when outages do occur. A consistent approach to outage reporting across states promotes efficiency and helps prevent a "patchwork quilt" of state-by-state

¹ CTIA – The Wireless Association ("CTIA") (www.ctia.org) represents the U.S. wireless communications industry and the companies throughout the mobile ecosystem that enable Americans to lead a 21st century connected life. The association's members include wireless carriers, device manufacturers, and suppliers as well as app and content companies. CTIA vigorously advocates at all levels of government for policies that foster continued wireless innovation and investment. The association also coordinates the industry's voluntary best practices, hosts educational events that promote the wireless industry and co-produces the industry's leading wireless tradeshow. CTIA was founded in 1984 and is based in Washington, D.C.

² Vermont Enhanced 911 Board, "Proposed Rule Governing Outage Reporting Requirements for Originating Carriers and Electric Power Companies," as approved by the Board on July 30, 2020 ("Proposed Rules"), available at https://e911.vermont.gov/sites/nineoneone/files/doc_library/E911-ProposedRule_OutageReportingRequirementsforOriginatingCarriersandElectricPowerCompanies_.pdf (last accessed Oct. 16, 2020).



reporting systems that unnecessarily divert resources away from the important work of restoring networks when they do go down.

Under legislative directive, the Board has based its Proposed Rules on the California Governor’s Office of Emergency Services (“CalOES”) Emergency Outage Reporting Regulations that went into effect on July 1st on an interim basis.³ While CTIA had proposed adoption of the FCC’s outage reporting standard, it recognizes that Senate Bill 301 requires a different set of standards based, as applied, on California’s.⁴ The Board can nevertheless promote consistency and limit inefficiencies across the states by bringing the Proposed Rules closer to those implemented by CalOES in a number of ways.

First, the Board should treat carrier outage report submissions as inherently confidential, as is the case for outage reports submitted to CalOES.⁵ As CTIA noted in response to previous iterations of the Proposed Rules, rather than have a blanket determination that the outage notifications and their contents are confidential, the Proposed Rules presume submitted information is “public information unless otherwise noted.”⁶ This creates conflicting imperatives for carriers. On one hand, the Proposed Rules ask for an initial notification “within one hour of discovery,”⁷ putting carriers under significant time pressure to prepare and submit the necessary reports. On the other hand, the Board is proposing a system where each and every report will have to go through internal legal review before submission to ensure that highly

³ See California Governor’s Office of Emergency Services, Title 19. Public Safety Text of Proposed Emergency Regulations §2480.3(c) (July 1, 2020).

⁴ See Vt. Act 125 (2020) (“When one or more states with a combined population of 20,000,000 residents adopts a rule or enacts a law that applies a lower reporting threshold than is required under 47 C.F.R. Part 4, §4.9(e)(1)(ii) as it pertains to wireless service providers, the E-911 Board shall initiate the rulemaking required under subsection (a) of this section and shall incorporate the lowest above-referenced reporting threshold applicable to wireless service providers into its proposed rule...”)

⁵ See Cal. Gov’t Code Section 53122(e).

⁶ See Proposed Rules at Section 6.1.

⁷ Proposed Rules at Section 4.4.1.



sensitive information is marked confidential and is not inadvertently revealed, which will lengthen the process of getting these reports to the Board.

An approach that treats carrier reports as inherently confidential is wholly appropriate under the Vermont Public Records Act (“VPRA”),⁸ which, as CTIA noted in previous comments before the Board, contains explicit protections for trade secrets.⁹ CTIA also noted that the U.S. Department of Homeland Security has declared that information regarding wireless network outages is “Protected Critical Infrastructure Information” (“PCII”) that should be closely guarded from disclosure for reasons of national security.¹⁰ The Federal Communications Commission (“FCC”) has mirrored these national security concerns and also indicated that there potentially are serious adverse competitive consequences that may result from the disclosure of this information.¹¹ Reflecting those reasons, federal law contains an exemption from Freedom of Information Act (“FOIA”) requests for such information.¹² Furthermore, the FOIA exemption for PCII has an analogue under the VPRA,¹³ which references FOIA as guidance for its interpretation,¹⁴ and Vermont courts have looked to the way federal

⁸ 1 V.S.A. § 317 *et seq.*

⁹ See 1 V.S.A. § 317(c)(9) (defining “trade secrets” as “confidential business records or information... which a commercial concern makes efforts that are reasonable under the circumstances to keep secret, and which gives its user or owner an opportunity to obtain business advantage over competitors who do not know it or use it.”)

¹⁰ See *Critical Infrastructure Sectors*, U.S. Department of Homeland Security, *available at* <https://www.dhs.gov/cisa/critical-infrastructure-sectors> (last accessed Oct. 16, 2020); see also *Procedures for Handling Critical Infrastructure Information*; Final Rule, 6 C.F.R. § 29.3 (2006); 47 C.F.R. § 4.2.

¹¹ See, e.g., Report and Order, Further Notice of Proposed Rulemaking, and Order on Reconsideration, 31 FCC Rcd 5817 (May 26, 2016) at paras. 84-85.

¹² See 5 U.S.C. § 552(b)(7).

¹³ Compare 5 U.S.C. § 552(b)(7) to 1 V.S.A. § 317(c)(5)(A)(vi).

¹⁴ 1 V.S.A. § 317(c)(5)(C) (“It is the intent of the General Assembly that in construing subdivision (A) of this subdivision (5), the courts of this State will be guided by the construction of similar terms contained in 5 U.S.C. § 552(b)(7) (Freedom of Information Act) by the courts of the United States.”)



courts have interpreted FOIA for guidance in interpreting the exemptions to the VPRA.¹⁵

At the Board's October 9, 2020 public hearing, some public commenters expressed concern that an inherent designation of confidentiality for submitted reports would harm public safety by denying information to consumers. CTIA disagrees. Keeping the reports confidential would not in any way compromise the ability of the Board to notify affected consumers of 9-1-1 outages, which CTIA agrees is an appropriate role for the Board to play. But it is decidedly not in the public interest to make the individual reports widely available, because those reports include sensitive and proprietary information such as the addresses and locations of specific pieces of carrier network infrastructure. While that information has no value to consumers, *that* is precisely the sort of information that could be leveraged by bad actors, whether terrorists who seek to damage communications networks or carriers seeking a competitive advantage by mapping their competitors' networks, which is why such information is protected both under federal law and in the VPRA.

CTIA re-emphasizes that its proposed language would not preclude the Board from providing situational awareness of outages, which CTIA understands to be the main purpose of the Proposed Rule, nor would the presumption of confidentiality for submitted information deprive members of the public of the ability or right to contest that presumption for individual cases under the appeals provisions within the VPRA.¹⁶

The Board should also clarify in the Proposed Rules the definition of "outage" to mean a "*significant* degradation in the ability of an end user to establish and maintain a channel of communications to make 9-1-1 calls or receive emergency notifications as a result of failure or degradation in the performance of a communications provider's

¹⁵ See, e.g., *Rutland Herald v. Vt. St. Police and Office of the Atty. Gen'l*, 2012 VT 24 (Vt. Sup. Ct. 2012) at para. 68 (citing D.C. Circuit Court interpretations of the FOIA "law enforcement" exemption as "analogous" to the VPRA exemption).

¹⁶ See 1 V.S.A. §§ 318(c), 319(a).



network,” adding that one word to the proposed definition. As CalOES made a point of explaining when it proposed its rules, the modifier “significant” clarifies that an outage occurs only when the degradation affects the end user to such an extent that it causes an impairment or inability to establish and maintain a channel of communication.¹⁷ This important amendment, which mirrors federal standards, helps to ensure that carriers are not forced to unnecessarily report network conditions that may not prevent a consumer from completing a call to and communicate with the 9-1-1 system. Furthermore – and contrary to suggestions from some public commenters at the hearing – by clearly defining the term within its Rules, the Board will help to ensure clarity for all parties regarding what constitutes a reportable 9-1-1 outage.

Finally, the Board should adopt any outage reporting rules on a provisional basis, with a required review after a year’s time to revisit any potential issues. Because, unlike the California process, the Board’s approach has yet to be tested in the real world, it is important to revisit the rules and ensure that any issues that arise be addressed. In particular, and as noted previously to the Board, CTIA remains concerned that the one-hour threshold for filing of outage and restoration reports may not be workable in light of the information carriers are required to submit and the fact that current FCC standards for reporting allow for significantly more time to file reports.¹⁸

As noted previously, the CalOES rules were adopted on an interim basis, and carriers are continuing to operationalize them, potentially discovering issues related to those regulations. Such issues could be raised with CalOES when it begins the final rulemaking process later this year. And because Act 125 requires a Board rulemaking based on the adoption of rules in another state, it is reasonable for the Board to follow

¹⁷ See California Governor’s Office of Emergency Services, Addendum to Finding of Emergency, *available at* <https://www.caloes.ca.gov/PublicSafetyCommunicationsSite/Documents/AddendumtoFindingofEmergency.pdf> (last accessed Oct. 16, 2020) at p.1-2.

¹⁸ See CTIA Letter to the Board (July 27, 2020), *available at* <https://api.ctia.org/wp-content/uploads/2020/07/CTIA-Comments-on-Vermont-Enhanced-911-Board-Revised-Outage-Reporting-Rules-Response-Times.pdf> (last accessed Oct. 16, 2020).



up with a review of its rules to incorporate any feedback on the other state's rules as well.

Sincerely,

_____/s/

Benjamin Aron

Benjamin Aron

Director, State Regulatory Affairs

CTIA

BAron@ctia.org

(202) 736-3683